

REMARKS

Claims 1, 3-14, and 19-31 are present in this application. Claims 2 and 15-18 are canceled. Claims 1, 7, and 19 are independent claims.

§102(e) REJECTION – Ellis

Claims 1-6 and 15-18 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Application Publication 2005/0028208 (Ellis 1). Applicant respectfully traverses this rejection.

Claim 1

Embodiments covered by claim 1 (see Figs. 1 and 3) include a data recording device (e.g., Information Processing Device 2). Embodiments of the data recording device can include receiving means (e.g., Data Receiving Section 23) for receiving data distributed through a distribution medium (e.g., Broadcasting System 102), a comparison means (e.g., Identifier Comparing Section 25) for making a comparison between a data identifier included in the data received by the receiving means (“IDENTIFIER”) and a data identifier inputted from the outside (e.g., from Identifier Receiving Section 21 and Identifier Storing Section 22), storing means (e.g., Data Storing Section 27) for storing data having the data identifier when the two data identifiers coincide with each other, and accepting means (e.g., Identifier Receiving Section 21 and Identifier Storing Section 22) for accepting from a portable device (e.g., portable device 1), which stores a data identifier assigned to a performance that the user watched at a performance site (performance site 101), the data identifier as the data identifier inputted from the outside, wherein the portable device is set to be ready to communicate data with the data recording device.

As can be seen in Fig. 4 of the present application, an identifier and a main body of record data are transmitted in combination (specification at page 15). As can be seen in Fig. 5, when the data are received, the identifier is compared with an identifier sent by a portable device to determine if they are the same (step S6). If they are the same ("YES"), the data is stored in the data storing section (step S7). Otherwise the received data is not stored.

In the "Response to Arguments" the Examiner alleges that Ellis discloses storing an identifier obtained from the remote access device 24 (e.g., program identifier, title, program time, channel, etc) in the storage device 56, and at an appropriate "later" time, the selected program will be recorded in storage device 56. The Examiner alleges that when the selected program is recorded, a comparison between "a data identifier included in the data received by the receiving means (i.e. program identifier, program title, etc. received through the program source such as main facility with the program content when the program is aired)" and the data identifier from the remote access device would be inherent in Ellis 1 so that the selected program is recorded at appropriate time.

It appears that the Examiner's argument is that the recorded program of Ellis 1 would include a data identifier, and this data identifier would be compared with a data identifier obtained from the remote access device 24 after the program has been received.

Applicant disagrees.

Ellis 1 at paragraph 0127 describes the process of scheduling recording of a program, as follows:

"The remote access program guide may also provide the user with the opportunity to remotely schedule recordings using the local interactive program guide. The user may, for example, select a program listing using user interface 52 (FIG. 5) and issue an appropriate command (e.g., pushing an on-screen "button," issuing an appropriate voice command, etc.). The remote access program guide may respond by sending one or more access communications to the local interactive program guide implemented on interactive television program guide equipment 17 with the remote program guide access device 24 to record the program associated with the selected listing when the program is aired. The local program

guide may store the program on secondary storage device 32, digital storage device 31, or on storage 56 of remote program guide access device 24.”

Thus, it can be seen that Ellis 1 teaches scheduling recording of programming by the remote program guide access device for the time when the program is aired. At the time that the program is aired, the local program guide stores the program on storage 56 of remote program guide access device. Ellis does not disclose a comparison operation performed after the program has been received and before it is stored, as required in the claims.

Furthermore, the so-called data identifier of Ellis 1 is not obtained at a performance that the user attended. An aspect of the present invention is that it is required that the user has watched the performance at the performance site in order to obtain a data identifier using the portable device. Even though the data recording device receives the data distributed through a distribution medium, the data is not stored unless the data identifier had been obtained because the user attended the performance. This aspect is reflected in claim 1 as amended.

For at least these reasons, Applicant submits that Ellis 1 fails to teach each and every claimed element. Accordingly, the rejection fails to establish *prima facie* anticipation of claim 1, as well as respective dependent claims. Applicant requests that the rejection be reconsidered and withdrawn.

§ 103(a) REJECTION – Ellis

Claims 7-13 and 31 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis 1. Applicant respectfully traverses this rejection.

Claim 7

Embodiments of the present invention covered by claim 7 are directed to a performance recording system (e.g., Performance Recording System in Fig. 1). Aspects of the performance recording system include a portable device (e.g., portable device 1) capable of obtaining and storing a data identifier assigned to a performance that the user watched at a performance site, a distribution medium (e.g., Broadcast Station 104 or Server 105) for distributing record data of the performance as data together with the data identifier, a data

recording device (e.g., Information Processing Device 2) which stores record data based on the data identifier from the portable device and the data identifier from the distribution medium. The data recording device including a receiving means (e.g., Data Receiving Section 23) for receiving data distributed through a distribution medium (e.g., Broadcasting System 102), a comparison means (e.g., Identifier Comparing Section 25) for making a comparison between a data identifier included in the data received by the receiving means ("IDENTIFIER") and a data identifier inputted from the outside (e.g., from Identifier Receiving Section 21 and Identifier Storing Section 22), and storing means (e.g., Data Storing Section 27) for storing data having the data identifier when the two data identifiers coincide with each other.

The Final Office Action maintains that Ellis 1's remote access device 24 meets the claimed "portable device, and that the remote access device 24 " is alleged as being capable of obtaining and storing data identifier given to a performance such as title of a program, program identifier, etc. — paragraph 0092, figures 1, 5. (Final Office Action at page 12).

Applicant has reviewed paragraph 0092 and find that although it discloses possible devices that may be the remote program guide access device 24, the paragraph does not teach the capability of obtaining and storing data identifier given to a performance such as title or program identifier. Figures 1 and 5 show basic components of a program access guide 24.

Ellis 1 does appear to disclose that the remote access program guide may provide users with an opportunity to remotely access interactive television program guide functionality, and remotely schedule recordings using local interactive program guide (discussed in Ellis 1 at paragraphs 0123 to 0129). However, in every case the remote access program guide is for a performance to be broadcast. Applicant submits that Ellis 1 does not disclose a data identifier given to a performance at a program site. In particular, Applicant submits that Ellis 1 does not teach or suggest a data identifier given to a performance that the user watched at a performance site.

An aspect of the present invention is that it is required that the user has watched the performance at the performance site in order to obtain a data identifier using the portable device.

Even though the data recording device receives the data distributed through a distribution medium, the data is not stored unless the data identifier had been obtained because the user attended the performance. This aspect is reflected in claim 7 as amended.

For at least these reasons, Applicant submits that Ellis 1 fails to teach each and every claimed element. Accordingly, the rejection fails to establish *prima facie* obviousness of claim 7, as well as respective dependent claims. Applicant requests that the rejection be reconsidered and withdrawn.

§103(a) REJECTION – Ellis, Sehr

Claims 14 and 19-30 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis 1 and U.S. Patent 6,999,936 (Sehr). Applicant respectfully traverses this rejection.

Embodiments of the present invention covered by claim 19 are directed to a performance recording system (e.g., Performance Recording System in Fig. 1). Aspects of the performance recording system include a portable device (e.g., portable device 1) having a data identifier storing means (e.g., identifier storing section 12) for previously storing a data identifier assigned to a performance that the user has watched, a distribution medium (e.g., Broadcast Station 104 or Server 105) for distributing record data of the performance as data together with the data identifier, a data recording device (e.g., Information Processing Device 2) which stores record data based on the data identifier from the portable device and the data identifier from the distribution medium. The data recording device including a receiving means (e.g., Data Receiving Section 23) for receiving data distributed through a distribution medium (e.g., Broadcasting System 102), a comparison means (e.g., Identifier Comparing Section 25) for making a comparison between a data identifier included in the data received by the receiving means (“IDENTIFIER”) and a data identifier inputted from the outside (e.g., from Identifier Receiving Section 21 and Identifier Storing Section 22), and storing means (e.g., Data Storing Section 27) for storing data having the data identifier when the two data identifiers coincide with each other.

The Final Office Action alleges that Ellis discloses the features of claim 19, but admits that Ellis does not disclose a portable device used as an entrance ticket for a performance (Final Office Action at page 16). Instead, the Final Office Action states that,

“Sehr discloses a portable device used as an entrance ticket for a performance (portable ticket card/portable visitor card device used for admission to events such as sporting activities or other entertainment programs- see including, but are not limited to, abstract, col. 3, lines 34-62). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ellis to use the teaching as taught by Sehr in order to reduce administrative cost, improved productivity, better quality of service, and higher revenues associated with the issuance, usage, and processing of the computerized cards (col. 2, lines 2-40).”

Applicant submits that the statement of motivation based on an advantage disclosed for Sehr's admission system merely teaches one of ordinary skill in the art the benefit of Sehr's system. No evidence has been provided to establish a motivation to combine Sehr and Ellis 1. Applicant submits that Ellis 1 and Sehr are directed to completely unrelated systems and services. Sehr is directed to an automated admission system that replaces conventional paper or plastic ticket-based systems with a portable visitor card device and related services. Ellis 1 is directed to an interactive television program guide with remote access.

Applicant submits that Sehr's advantages of removed administrative costs, improved productivity, better quality of service, etc. are associated with issuance, usage and processing of the computerized cards, and do not apply to Ellis 1's interactive television program guide. Sehr states that lower administrative costs are the result of less personnel needed for automated admissions (col. 2, lines 13-20). Sehr states that improved productivity is the result of substituting time consuming, labor intensive, and error prone manual operations associated with conventional payment environments (col. 2, lines 21-27). Sehr states that improved quality of service – when using the computerized card – is the result of achieving faster admission or improved throughput at point of service (col. 2, lines 28-34). Sehr states that higher revenues will

be achieved by allowing visitors to earn frequent attendance and shopper points (col. 2, lines 35-40). Applicant submits that these benefits result from the use of the computerized cards in automated admissions, and thus do not provide teaching, suggestion or motivation to combine Sehr and Ellis 1.

Furthermore, Applicant submits that Sehr fails to make up for the deficiency in Ellis 1 of failing to teach a data identifier obtained at a performance site.

An aspect of the present invention is that it is required that the user has watched the performance at the performance site in order to obtain a data identifier using the portable device. Even though the data recording device receives the data distributed through a distribution medium, the data is not stored unless the data identifier had been obtained because the user attended the performance. This aspect is reflected in claim 19 as amended.

For at least these reasons, Applicant submits that Ellis 1 and Sehr, either alone or in combination, fail to teach each and every claimed element. Accordingly, the rejection fails to establish *prima facie* obviousness of claim 19, as well as respective dependent claims, and claim 14. Applicant requests that the rejection be reconsidered and withdrawn.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert Downs Reg. No. 48,222 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: April 9, 2007

Respectfully submitted,

By Robert W. Downs #48,222
Terrell C. Birch
Registration No.: 19,382
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant